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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of LILIA M.
GONZALES and ROBERT E.
GONZALES.

LILIA M. GONZALES,

Appellant,

v.

ROBERT E. GONZALES,

Respondent.

A103817

(San Francisco County
Super. Ct. No. FL040999)

I.

INTRODUCTION

In this dissolution proceeding, Lilia Gonzales (Lilia)¹ appeals from an order vacating a stipulated settlement. She contends the trial court abused its discretion by granting Code of Civil Procedure section 473, subdivision (b)² relief to her former

¹ We intend no disrespect to the parties by referring to them by first name; we do so solely for purposes of clarity.

² Code of Civil Procedure section 473, subdivision (b) authorizes the trial court, “upon any terms as may be just, [to] relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” All undesignated statutory references are to the Code of Civil Procedure.

husband, Robert Gonzales (Robert) on the ground of excusable mistake. We conclude that the trial court's exercise of discretion is supported by the evidence and affirm.

II.

FACTS AND PROCEDURAL HISTORY

The parties were married in 1979. On December 9, 2002, the parties appeared for a bifurcated trial on the contested issue of the date of separation. Robert's contention was that the date of separation was November 1986, when he moved from the family residence at 361 Pennsylvania Avenue in San Francisco. Lilia's contention was that the date of separation was actually March 2001. Prior to December 9, 2002, ongoing negotiations had taken place in an attempt to arrive at a settlement of the disputed issues in this matter, including the date of separation, the nature and extent of community property, and spousal support. Even though Robert is an attorney, counsel represented him at all pertinent times in this dissolution proceeding.

On December 9, 2002, when the matter was called to trial, the parties announced they had just reached an agreement on a settlement of all outstanding issues. The essential terms of the stipulated settlement were read into the record by the parties' legal counsel, even though the formal settlement documents had yet to be drafted and signed. Lilia would receive a payment of \$538,000 for her share of the community property, including the family residence at 361 Pennsylvania Avenue in San Francisco where she was residing. The \$538,000 was to be paid six months from the date Lilia vacated the family residence or when Robert sold the residence, whichever occurred first. Additionally, Lilia was to receive \$5,000 when she vacated the family residence so that she could sign a lease elsewhere and await receipt of the \$538,000. Furthermore, Robert was to pay a lump sum payment of \$5,000 in spousal support to Lilia. In return for these payments, Lilia would give up her interest in all community property of the parties, waive future spousal support, and sign deeds from her to Robert for the properties held in his name as well as the family residence.

During counsels' statement of the settlement on the record, the following exchange occurred with regard to the documents to be executed by Lilia to transfer her

interest in the family residence to Robert: Lilia’s counsel indicated that “this is an interspousal transfer of property. Ms. Gonzales will quitclaim her interest to Mr. Gonzales in return for . . . the funds that [Robert’s counsel] has put into the record” The court inquired, “Will that quitclaim deed occur prior to the place being marketed for sale?” Both counsel answered in the affirmative. Lilia’s counsel then stated: “It will be an interspousal transfer pursuant to IRC for ten thousand four one four [*sic*].”³

At the conclusion of the announcement of the terms of the stipulated settlement, the judge inquired of each party as to whether he or she consented to the terms of the stipulation. Both parties indicated their understanding and approval of the terms of the settlement. The settlement was approved by the court, with the court indicating, “even though there is nothing in writing at this time with your signatures or my signature, this order has the same affect [*sic*] as though it were in writing.” The court left it up to the lawyers “to come up with the language that you will sign.”

Lilia moved out of the family residence on January 31, 2003, seven weeks after the hearing in which the parties entered into the stipulated settlement; and Robert prepared the house for sale. However, problems arose with respect to the written description and implementation of the terms of the settlement agreement. The subject of the dispute was the tax consequences of the sale of the family residence. Each party had a different recollection of the agreement that was reached in the preliminary discussions leading to the settlement that was placed on the record at the December 9, 2002 hearing.

³ Counsel’s reference to “IRC for ten thousand four one four” was later found to be erroneous. Counsel was apparently intending to refer to Internal Revenue Code section 1041(a)(2), which embodies the basic policy that no gain or loss is recognized on a transfer of property from an individual to a former spouse if the transfer is incident to divorce. As enacted, section 1041 applies to defer the recognition of gain or loss on an interspousal transfer of property until the time that the recipient spouse transfers the property to a third party outside of the marital unit. Thus, the consequence of an interspousal transfer of property is simply that the spouse to whom the property is transferred is responsible for the taxes upon sale.

Lilia believed that the \$543,000 (the \$538,000 lump-sum payment plus the \$5,000 Robert was supposed to pay her when she moved out of the family residence and leased another residence) was to come to her “tax-free.” Robert believed that Lilia would be responsible for her share of the capital gains taxes due on her \$543,000 share of the property.

On April 11, 2003, after attempts to consummate a written settlement agreement proved futile, Robert filed a motion to vacate the settlement under the court’s discretionary power as stated in section 473, subdivision (b), alleging the settlement resulted from excusable neglect or mistake. His counsel explained that he “mistakenly did not comprehend the implications” and the legal consequences that would be imposed by Lilia’s transfer of her interest in the residence “by way of an interspousal transfer grant deed.” Robert submitted a declaration indicating, “It was not until the day before yesterday when I received a faxed letter from [Lilia’s counsel] that I realized it was [his] intention that my ex-wife pay no capital gains on the \$543,000 she would receive for her share of the family residence and that this was his reason for adding the term of the ‘interspousal transfer of property.’” His counsel indicated that Robert should be allowed to withdraw from the settlement because “[t]o permit the stipulated judgment to stand as a result of my mistakes would result in a great financial inequity” to Robert in the amount of approximately \$110,000.⁴

After the matter was briefed and argued, the trial court granted Robert’s section 473 motion on the ground of mistake. Furthermore, the court denied Lilia’s motion pursuant to section 664.6 to enforce the settlement and enter judgment in accordance with the stipulated agreement. The court made various provisional orders with regard to Lilia’s financial support and attorney fees, and the action was restored to

⁴ The calculations submitted with Robert’s section 473 petition are as follows: The family home, properly prepared and marketed, was expected to sell for \$1.2 million. Assuming \$200,000 to be the base price and the costs of sale, there will be capital gains taxes of \$200,000 due on the remaining \$1 million, which Lilia wanted Robert to pay. To the contrary, Robert believed “[t]he capital gains taxes should be equitably apportioned between Lilia and me.”

the contested calendar for consideration of the financial aspects of the parties' dissolution. This timely appeal followed.

III.

DISCUSSION

A. Standard of Review

Section 473, subdivision (b), provides relief from the entry of a judgment based upon “mistake, inadvertence, surprise, or excusable neglect.” Of course the grounds available under section 473 for relief from a judgment taken against a party through his or her mistake, inadvertence, surprise or excusable neglect are applicable to an order or decree incorporating a settlement agreement. (*In re Marriage of Kerry* (1984) 158 Cal.App.3d 456, 465; see also *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 255, fn. 3 (*Zamora*).)

It is true, as Lilia emphasizes, that public policy has long supported pretrial settlements. “A stipulated settlement is not so important, however, that it will withstand all attacks and must be supported at all costs. Ordinarily a party may be relieved from a stipulation upon timely application to the court and a hearing made on affidavits. The court thereafter exercising ‘its sound discretion, may set aside a stipulation entered into through inadvertence, excusable neglect, fraud, mistake of fact or law, where the facts stipulated have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the stipulation.’ [Citation.]” (*Roth v. Morton’s Chefs Services, Inc.* (1985) 173 Cal.App.3d 380, 385-386, italics omitted.)

The motion is directed to the sound discretion of the trial court, and all doubts should be resolved in favor of securing a trial on the merits. Appellant bears the burden of demonstrating that the order is an abuse of discretion, meaning that it exceeded bounds of reason. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 787; *In re the Marriage of Kerry, supra*, (1984) 158 Cal.App.3d at p. 466.) “Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice

to the opposing party will ensue. [Citations.] In such cases, the law ‘looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.’ [Citation.]” (*Zamora, supra*, 28 Cal.4th at p. 258.)

When the motion is decided based upon conflicting declarations, or facts from which conflicting inferences may be drawn, this court must assume that the trial court resolved all conflicts in favor of the prevailing party, and uphold all explicit and implicit factual determinations made by the trial court in support of its order if they are supported by substantial evidence. (*Zamora, supra*, 28 Cal.4th at pp. 255-256; *In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 118-119; *Turley v. Turley* (1967) 254 Cal.App.2d 169, 172.) A showing on appeal under the abuse of discretion standard is “insufficient if it presents a state of facts which simply affords an opportunity for a difference of opinion. [Citation.]” (*In re Marriage of Eben-King & King, supra*, 80 Cal.App.4th at p. 118.)

B. Did the Court Abuse its Discretion by Granting Relief for Mistake?

Contrary to this established standard of review, Lilia asks this court to adopt a one-sided interpretation of the evidence supporting her view that Robert failed to establish any grounds for relief under section 473, subdivision (b). Lilia emphasizes that the December 9 recitation of the parties’ settlement agreement into the record contained numerous references to the fact that Lilia would transfer her interest in the family residence prior to its sale by means of “an interspousal transfer of property.” She argues “[t]he tax consequences of interspousal transfers incident to a divorce is a staple of marital practice.” Thus, she insists the alleged mistake of law was attributable to the inexcusable negligence of Robert’s legal representative, which does not constitute a basis to rescind the agreement. (See *Zamora, supra*, 28 Cal.4th at p. 258.) She also claims the court should have refused to permit the use of section 473, subdivision (b) to return the parties to their pre-settlement positions because she had relied upon the oral settlement agreement to her detriment and Robert had not been diligent in seeking relief.

The basis upon which the trial court granted Robert's section 473 motion was its expressed opinion that Robert's counsel had made an excusable mistake or acted with excusable neglect in failing to recognize the legal significance of the "interspousal transfer" language when the terms of the parties settlement agreement were recited into the record. Construing the evidence presented by Robert liberally, and in support of the trial court's ruling, we conclude the evidence supported the trial court's conclusion.

Thus, Robert showed that at the time the parties hastily negotiated the terms of the marital settlement agreement just prior to trial, he believed they had reached an agreement that Lilia would be responsible for her share of the capital gains taxes due on her \$543,000 share of the property. However, when the terms of the settlement agreement were summarized on the record there was nothing *explicitly* placed in the record indicating which party was obligated to bear the tax consequences of the sale of the family residence. Instead, the record reflects Lilia's counsel indicated an interspousal transfer would take place and made a misleading reference to "IRC for ten thousand four one four." At the hearing on Robert's motion for section 473 relief, counsel claimed that this erroneous citation to a nonexistent section of the Internal Revenue Code merely "created confusion." Nevertheless, counsel "accept[ed] full responsibility" for not understanding the full legal significance of Lilia's counsel's reference to an interspousal transfer. Counsel explained, "In all of the transactions and all of the cases where I have dealt with interspousal transfer grant deeds, it resulted in . . . one party giving up their interest in property . . . , but I have never encountered a situation where that property was about to be sold" Consequently, "it simply eluded me as to what the [tax] consequences might be for [Robert]."

The court's oral ruling, relieving Robert from the effect of the stipulated settlement, indicated there was "obviously a mistake" in failing to recognize that by negotiating an interspousal transfer deed, Lilia "was no longer an owner and thus no longer an obligor for tax consequences." The court found the mistake, under the circumstances, was a reasonable mistake, indicating "it was clear that [counsel] just wasn't thinking that day about what the tax consequences would be." The court also took

into account that “[h]aving been a practitioner dealing with settlements on the courthouse steps, I can understand very clearly why the tax consequences were not dealt with in as specific a way as they should have been, a mistake, surely.”

In so ruling, we believe the court clearly understood and applied the correct standard for evaluating a section 473, subdivision (b) motion when a party seeks relief on the basis of mistake or inadvertence of counsel. “ ‘Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not . . . excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.’ [Citation.]” (*Zamora, supra*, 28 Cal.4th at p. 258.) By contrast, an attorney’s mistake or inadvertence is excusable when “ ‘a reasonably prudent *person* under the same or similar circumstances” ’ might have made the same error. [Citation.]” (*Ibid.*, italics in original.) “In other words, the discretionary relief provision of section 473 only permits relief from attorney error ‘fairly imputable to the client, i.e., mistakes anyone could have made.’ [Citation.]” (*Ibid.*)

For example, in *Zamora*, the moving party’s attorney made a typographical error in a settlement offer under section 998, offering to settle the matter for a judgment against, rather than in favor of, the attorney’s client. The opposing party, not surprisingly, accepted the offer and judgment was entered against the attorney’s client. The client moved under the discretionary provision of section 473 to vacate the judgment on the ground of excusable mistake, and the trial court granted the motion. (*Zamora, supra*, 28 Cal.4th at pp. 252-253.) The Supreme Court affirmed, holding that “the trial court reasonably concluded that the mistake made by *Zamora*’s counsel was excusable” because it was a “mistake that could have been made by anybody.” (*Id.* at p. 259.)

It is apparent that in finding Robert made the necessary showing for relief under section 473, the trial judge found the mistake made in this case was the same kind of error anyone could have made. By contrast, the court recognized this was not a case in which Robert sought to set aside the settlement agreement simply because he changed his mind or because he was attempting to deprive Lilia of the benefits conferred to her under

the parties' agreement. Instead, this case involved a basic lack of understanding, or mistake, as to the meaning of the terms of the settlement agreement itself. The court concluded that, under the circumstances of this case, the mistake was excusable. We are not prepared to say that this conclusion constitutes an abuse of discretion.

Lilia also claims the court abused its discretion in granting Robert relief because his motion was not timely and there was no excuse for the delay in seeking relief. Application for relief under section 473 must be made "within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." Where a party has filed a motion for relief after an extended delay without providing an adequate excuse for the delay, a trial court abuses its discretion if it grants relief under section 473. (*Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 532-533.)

Obviously, whether Robert brought the section 473 motion within a reasonable time depends upon when he discovered that a mistake had occurred. In contending that the motion was not timely brought, Lilia bases her argument on the assumption that Robert was aware of the mistake with regard to the tax consequences from the sale of the family residence as early as December 9, 2002, the date the terms of the settlement were placed on the record. The trial court, however, was entitled to believe Robert's declaration that, in fact, it was not until April 9, 2003, that he learned Lilia intended the transaction would be tax free to her and that Robert would be paying all of the capital gains tax. He filed his section 473 motion just a few days later, on April 11, 2003. Given these facts, we conclude that the trial court did not abuse its discretion by determining that Robert's section 473 motion was brought within a reasonable time.

Lilia also contends section 473 relief should have been denied because she relied to her prejudice on the stipulated agreement by moving out of the family residence to her condominium in Mexico, putting her possessions in storage, and staying there "until I received my share of the community property, to wit, \$538,000 (plus the \$5,000 that [Robert] was supposed to pay me when I moved out)." Lilia failed to convince the trial judge, who was extremely familiar with this case, that substantial injury or manifest injustice would result if the parties' settlement agreement was set aside. The evidence

supports that determination. In response to Lilia's assertion of prejudicial reliance on the settlement agreement, Robert pointed out that "it has been clear from the outset in this case that 361 Pennsylvania Avenue was to be sold and [Lilia] has been ordered to look for alternative housing some months earlier." This assertion was never contradicted. Thus, setting aside the settlement agreement could not have prejudiced Lilia, who retains whatever rights she may have had against Robert for community property, spousal support, and attorney fees.

Lilia also claims that even an excusable mistake on Robert's part did not warrant the trial court setting aside the entire agreement. She points out that "[t]he only issue put before the court" was whether she "should pay capital gains taxes on the \$543,000 to be received by her pursuant to the settlement agreement." Thus, Lila claims the trial court erred in setting aside the entire settlement agreement, rather than the more appropriate and less drastic remedy of reforming the parties' agreement to eliminate the allegedly mistaken provision.

During the hearing on whether or not to grant Robert section 473 relief, the court pointed out that if the motion was granted, "all of the terms that you included in the stated portion of your agreement that's on the record will be gone." The court obviously believed that all of the provisions in the parties' settlement agreement were interrelated and interdependent and could not be severed for purposes of enforcement. We find no abuse of discretion in the court's desire to "start[] from scratch" and reconsider all of these issues together.

Because we affirm the trial court's order under the discretionary provision of section 473, subdivision (b), we need not address Lilia's argument that the court erred in denying her motion under section 664.6 to enter judgment on the stipulated settlement.

IV.
DISPOSITION

The judgment is affirmed.

Ruvolo, J.

We concur:

Haerle, Acting P.J.

Lambden, J.